IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.17517 of 1996

M.Vasanthi .. Petitioner

vs.

1. The District Collector,
   Dindigul Mannar Thirumalai District.

2. The Special Tahsildar,
   Adi Dravidar Welfare Scheme-I,
   Dindigul. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

For petitioner : Mr.N.Damodaran
For respondents : Mrs.D.Malarvizhi,
Govt. Advocate

ORDER

The prayer in the writ petition is for issuance of a writ of certiorari, calling for the records relating to the notification issued by first respondent herein, the Collector, Dindigul Anna District (Dindigul Mannar Thirumalai District)-Extraordinary, dated 31.1.1996 in Na.Ka.No.H.2/105497/95, dated 9.1.1996, with respect to the petitioner's land comprised in S.F.No.572/3 (0.81.0 Hectare), Kodalvavi Village, Dindigul Taluk, Dindigul Anna District and the consequential notice dated 9.8.1996 issued in Na.Ka.No.2132/95/A in Form-III under Rule 5(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 and quash the same.

2. Brief facts of the case are as follows:

(a) The land, which is the subject matter of the acquisition proceedings under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act No.XXXI of 1978) (hereinafter referred to as 'the Act'), originally belonged to the petitioner's father Shri.P.Madana Gurusamy, which was purchased by him in the year 1989. It is stated that the petitioner's father was in possession and enjoyment of the land by cultivating paddy, cotton and other plantation crops. The petitioner's father spent considerable amount in putting up bore-well in the land for cultivation.

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(b) According to the petitioner, the second respondent-Special Tahsildar, Adi Dravidar Welfare Scheme-I, Dindigul, took steps to acquire the land in S.No.572/3 in an extent of 0.81.0 hectares in Kodalvavi Village for providing house-sites to Adi Dravidars of Arasamarathupatti Village and G.O.Ms.(3.D).1079, Adi Dravidar and Tribal Welfare Department, dated 22.12.1994 was issued under the Land Acquisition Act (Central Act). A notice under Section 5-A of the Land Acquisition Act was issued to the petitioner's father and the same was dropped.

(c) The petitioner submits that after the acquisition under the Central Act was dropped, her father executed a registered settlement deed dated 15.9.1995, registered as Document No.844 of 1995 at the Office of the Sub-Registrar, Kannivadi favouring the petitioner in respect of S.F.No.572/3, Kodalvavi Village, in an extent of 2.50 acres out of the total extent of 4.92 acres.

(d) It is stated in the affidavit filed in support of the writ petition that the petitioner's father also executed a sale agreement with one Thirumalsami on 16.9.1995 in respect of the remaining extent of the land in the said Survey Number for valuable consideration. Pursuant to the said settlement deed dated 15.9.1995 executed in favour of the petitioner, it is stated that the petitioner was put in possession of the property and she became the absolute owner from 15.9.1995 and she is looking after the land with the help of her father.

(e) The petitioner further states that she got married during the year 1989 and is living with her husband at Komangalam Village of the Coimbatore District eversince. She received a notice dated 9.8.1996 from the second respondent in Form-III issued under Rule 5(i) of the Rules, 1979 and was asked to attend the award enquiry on 2.9.1996. Thereafter, she verified and came to know that her land was sought to be acquired and notification under Section 4 (1) of the Act 31 of 1978 was published in the Gazette on 31.1.1996 by the first respondent.

(f) It is stated that the petitioner was kept in dark about the acquisition proceedings and that she enquired with her father and came to know that no notice was served upon him regarding the land acquisition proceedings.

(g) It is also stated in petitioner's affidavit that only during the period 1.11.1995 to 30.12.1995, the petitioner's father and mother were away from the Village and the petitioner therefore contends that the notice in Form-I under Rule 3(i) of the Rules in terms of sub-section (2) of Section 4 of the Act was not sent to the last known address of the owner or any other person interested and that the mandatory procedure prescribed under the Act was not complied with and no proper opportunity was given to her. The petitioner therefore contends that the acquisition proceedings should be quashed as prayed for.

3. A counter affidavit has been filed by the first respondent and a detailed counter affidavit has been filed by the second respondent, disputing all the facts alleged by the petitioner, as follows:

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(i) It is stated that the acquisition proceedings were initiated under the Land Acquisition Act (Central Act) 1 of 1894. The land of Shri.Madana Gurusamy, the pattadar, was sought to be acquired under the aforesaid Central Act for the purpose of providing house-sites to Adi Dravidar people and the notification under Section 4(1) of the Act was issued and G.O.(3-D).1079, Adi Dravidar and Tribal Welfare Department, dated 22.12.1994 was published in the Gazette No.736 dated 30.12.1994.

(ii) Notice was issued under Section 5-A to the land owner Shri.Madana Gurusamy, the father of the petitioner, posting the enquiry on 23.2.1995, which notice was received by him on 7.2.1995, and Shri.Madana Gurusamy pleaded for time due to illness. The subsequent hearings were posted on 17.5.1995, 6.6.1995 and 20.6.1995 and for all these hearings, notice was sent to the petitioner's father through Registered Post as well as through the Village Administrative Officer (V.A.O), which was refused by the said Shri.Madana Gurusamy. Hence, notice was served by affixture. The Registered Post was returned with detailed endorsement to the effect that notice could not be served. However, after having requested for 30 days' time through his telegram dated 22.2.1995, Shri.Madana Gurusamy did not file the objection or appear for the enquiry.

(iii) The further submission in the counter affidavit is that pursuant to the Supreme Court's decision reported in AIR 1995 SC 2114 (State of Tamil Nadu vs. Ananthi Ammal), upholding the Act 31 of 1978, by virtue of Section 22 of Act 31 of 1978, the proceedings initiated under the Central Act shall continue. Section 22 of the Act 31 of 1978 provides as follows:

> "Section 22: Application of the Act to certain pending cases of acquisition:
>
> (1) The provisions of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter in this section referred to as the said Act) but no award has been made by the Collector under Section 11 of the said Act before such commencement, as if--
>
> (i) the notification published under sub-section (1) of Section 4 of the said Act; or
>
> (ii) the declaration made under Section 6 of the said Act; or
>
> (iii) the notice given under sub-section (1) of Section 9 of the said Act,
>
> were a notice to show cause against the acquisition of the land served under sub-section (2) of Section 4 of this Act.
>
> (2) Nothing contained in sub-section (1) shall apply in relation to any land unless and until after the District Collector has published

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a notice in the District Gazette to the effect that the said land is required for the purpose specified in sub-section (1) of Section 4 of this Act."

Therefore, the respondents proceeded with the acquisition under the New Act 13 of 1978.

(iv) A show cause notice dated 9.11.1995 in Form-I under Rule 3(i) of the Rules in terms of Section 4(2) of the Act 31 of 1978, was issued to the owner, namely Shri.Madana Gurusamy, posting the enquiry on 28.11.1995. This notice was sent through Village Administrative Officer for service. The Village Administrative Officer re-submitted the notice, stating that since Madana Gurusamy refused to receive the notice, it was served by way of affixture. A further notice, dated 28.11.1995, as above, was sent to the owner of the land by Registered Post Acknowledgement Due, posting the date of enquiry on 11.12.1995. This notice was also returned by the postal authorities, stating that "inspite of several reminders to the residents of the house and the residents not accepting, the post returned".

(v) It is further stated in the counter affidavit that the Special Tahsildar visited the land in S.No.572/3 on 28.12.1995 and found 132 coconut saplings about seven months old. The notification under Section 4(1) of the Act 31 of 1978 was approved by the Collector in his proceedings in No.105497/95/H.2, dated 9.1.1996, which was published in the District Gazette dated 31.1.1996. Thereafter, notice in the Award enquiry in Form-III under Rule 5(i) of the Rules, was issued on 14.3.1996, posting the enquiry on 21.3.1996, which was also sent through the Village Administrative Officer to the land owner Shri.Madana Gurusamy and since he refused to accept the same, it was served by affixture. The award enquiry notice was also sent by Registered Post, which was returned by postal authorities, recording as "between 16.3.1996 and 26.3.1996, inspite of several intimation to the residents, the person concerned has not made an endeavour to receive the letter, and the same is returned to the sender".

(vi) That on 24.3.1996, objections were filed by the said Shri.Madana Gurusamy, for the first time, stating that he had given 2.5 acres of land in S.No.572/3 to his only daughter Smt.Vasanthi, the writ petitioner herein, residing at Komangalam, Coimbatore District and that the acquisition proceedings have been initiated without notice to him.

(vii) That on information from the said Shri.Madana Gurusamy, award notice dated 9.8.1996 in Form-III under Rule 5(i) of the Rules was sent to the petitioner by Registered Post, posting the enquiry on 2.9.1996. On 2.9.1996, the petitioner herein submitted her objections stating that the "thoppu" land should not be acquired; that lands got through "thana settlement" and lands of small farmers, should not be acquired and since there is a temple belonging to the Chettiar community, the land should not be acquired.

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(viii) The objections were considered and rejected by the authority and Award No.1/96-97, dated 28.10.1996 was passed and the amount of Rs.69,024/- being the value of the land, was deposited in the Sub-Treasury Office, Dindigul on 11.11.1996. As per the award proceedings, 0.81.0 acres of land in S.No.572/3 has been re-numbered as S.No.572/3.B and classified as "Adi Dravidar Natham" on 13.11.1996 and the land was taken possession by the Special Revenue Inspector on 20.11.1996.

(ix) The writ petition has been filed at the time of issuance of award notice. By order dated 26.11.1996, while admitting the writ petition, this Court granted "interim stay of dispossession, if the possession has not been taken by the respondents" and by order dated 8.9.2003, this Court passed an order that "interim stay granted on 26.11.1996 is made absolute only in so far as the dispossession of petitioner's possession is concerned, if possession has already not been taken. Other proceedings may go on."

(x) It is stated by the respondents that the present acquisition under Act 31 of 1978 is only a continuation of the acquisition under Central Act 1 of 1894 and the owner Shri.Madana Gurusamy was fully aware of all the acquisition proceedings and therefore, to avoid the land being acquired, he executed a settlement deed dated 15.9.1995 in the name of his daughter, the writ petitioner herein and planted some coconut saplings in or around May 1995, only for the purpose of avoiding the acquisition proceedings, which is an after-thought and made deliberately for defeating the purpose of the acquisition proceedings.

(xi) Even at the time of issuance of G.O.(3.D).1079, Adi Dravidar and Tribal Welfare Department, dated 22.12.1994, and in the subsequent enquiry, the petitioner's father has sought for time, but failed to appear before the authorities.

(xii) It is submitted by the respondents that the land acquisition proceedings under the Central Act under Section 4(1), was published in District Gazette No.736 dated 30.12.1994 and as per the provisions of Section 22 of the Act 31 of 1978, notice in Form-I under Rule 3(i) of the Rules as per Section 4(2) of the Act 31 of 1978 was sent to the land owner Shri.Madana Gurusamy on several occasions and he refused to receive the notices and he did not participate in any of the proceedings in spite of knowledge of the acquisition proceedings at the earliest point of time.

(xiii) It is also submitted by the respondents that even before the grant of interim stay on 26.11.1996, necessary changes were carried out in the Village Accounts on 13.11.1996 as "Adi Dravidar Natham" and possession was taken on 20.11.1996 and in view of the award having been passed, it was submitted that the writ petition is liable to be dismissed.

4. Learned counsel for the petitioner submitted that no notice to the owner of the land viz. the petitioner, which is mandatory, as per the provisions of the Act 31 of 1978 was issued; that for whom the acquisition of the lands in question was sought to be made, has not been stated in Section 4(1) notification; that the

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satisfaction of the District Collector is not found in Section 4(1) notification nor it is stated in the counter. Hence, the entire acquisition proceedings are vitiated.

5. For the first proposition, the learned counsel for the petitioner relied upon a judgment of this Court reported in 1998 (II) C.T.C. 625 (Thangamuthu Gounder vs. Secretary, Government of Tamil Nadu) and submitted that the acquisition proceedings are liable to be quashed on the ground that the notice as per law has not been served on the owner. The facts of the case mentioned above are totally different from that of the petitioner's case. In the above mentioned case, the name of the petitioner finds place in Section 4(1) notification as owner. There, the Court held that notice for enquiry under Section 5-A should have been sent to the petitioner in that case. Further, the records were not produced to prove that notice was served by affixture. Hence, in view of the non-production of the records, this Court held that the acquisition proceedings were not proper.

6. In the present case, it was argued by the learned Government Advocate that the petitioner's father is the owner as per the Revenue records and the petitioner's father continues to be the owner as per the Revenue records and that is why, notice was sent to him repeatedly, at every stage of the acquisition proceedings and only after affixture of the award enquiry notice in Form-III of Rule 5(i) of the Rules, he had informed the authorities that the land was settled in favour of his daughter and thereafter, notice was issued to the writ petitioner. Writ petitioner has also filed her objections, which was duly considered by the authorities. The said Shri.Madana Gurusamy, the father of the petitioner, has filed his objections before the District Adi Dravidar Welfare Officer, dated 24.3.1996, to the notice issued for award enquiry and the same is extracted below:

> "I am in possession of the land in S.Nos.572/2 and 572/3 for a total extent of 4.92 acres and I am doing agricultural operation. I had sent my objections for acquiring my property for providing house-sites to Adi Dravidars. I had given 2.5 acres of land by way of settlement deed dated 15.9.1995 to my only daughter. I am submitting a copy of the settlement deed in favour of my daughter, dated 15.9.1995 and in respect of the balance land, I have made an agreement with a third party on 15.9.1995 and handed over possession to him and the acquisition proceedings under the Central Act has been dropped. However, the Special Tahsildar for Land Acquisition, under Act 31 of 1978, while seeking to acquire my land, has not taken into consideration the settlement and the agreement for sale. He has also not considered the fact that there are coconut trees and other trees on the property. Before acquiring the land, the Officer has not verified the encumbrance and no notice has been served on me.

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> The Officer has proceeded to initiate the acquisition proceedings against my land without enquiry as provided under the New Act 31 of 1978. Before proceeding to acquire the land, no notice was issued to me. The Special Tahsildar is proceeding without realising the correct factual position. If he still continues to proceed with the same, I will take action against him individually before the Court of law and he will be liable for all costs and consequences thereof. "

It therefore follows that the so-called settlement is not real, because in his objections, Shri.Madana Gurusamy claims that he is the owner of the land. The fact that the land was settled in favour of his daughter, the writ petitioner, comes to light only on 24.3.1996 long after issue of Section 4(1) notification, by the letter of Madana Gurusamy, the father of the writ petitioner. Further, the letter dated 24.3.1996 proceeds on the basis that Shri.Madana Gurusamy is the owner and not the petitioner. Initially, when the land in question was sought to be acquired under the Central Act, notice was served on the owner Shri.Madana Gurusamy and he sought for time. Thereafter, the said Madana Gurusamy has been avoiding all communications of the respondents. Hence, the submission of the counsel for the petitioner that no notice was served on the owner of the property as contemplated in the Act, does not hold good.

7. The definition of "owner" under Section 3(h) of the Act 31 of 1978 reads as follows:

> "Section 3(h): "Owner" includes any person, who is receiving or is entitled to receive the rent of any land or building, whether on his own account or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the land or building were let to a tenant".

It is clear that even at the earliest point of time, when the land was sought to be acquired under the Central Act, the father of the petitioner has received the notice as owner and prayed for time to submit his objections. In the writ petition also, it is clearly mentioned that the lands are being looked after by the petitioner's father and all the developments referred to in the writ petition, have been made by the petitioner's father only. In the objections filed in response to the Form-III notice also, he claims to be the owner. The father of the petitioner Shri.Madana Gurusamy has to be considered as owner by virtue of the definition of "owner" under Section 3(h) of the Act 31 of 1978. The contention of the respondents that they have rightly sent all the notices to the owner of the property in question, as per the Revenue records, and also on the basis of the earlier acquisition proceedings in which the petitioner's father had received the notice as owner, is acceptable as valid service. There is no reason for the respondents to presume that the land belongs to the writ petitioner. A Full Bench of this

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Court in the decision reported in 1989 Writ L.R. 89 (Thanikavelu.P.C. vs. The Special Deputy Collector for Land Acquisition, Madras), clearly held that "a person whose name is not entered in the records as "person interested" but about whom the officer conducting enquiry is informed of the interest possessed by such person--notice on such person, held, necessary--individual notice mandatory only to those persons whose names are found in the records or who are found by the Collector as persons interested, on information received through reliable source." In this case, only on information by the father, pursuant to the award enquiry notice that the name of the writ petitioner came to be disclosed and therefore, notice was sent to the petitioner also. In any event, the petitioner's father would fall within the scope of the definition of "owner" under Section 3(h) of the Act 31 of 1978. However, Shri.Madana Gurusamy has refused to receive the notice, as is evident from the records and the counter affidavit filed. The claim of the writ petitioner that no notice has been served on her by the respondents, cannot be sustained and that in the absence of any change or mutation in the Revenue records, the first contention of the writ petitioner that no notice was served on her, has to fail.

8. The next contention of the petitioner is that the purpose for which the acquisition was sought to be made, is not specified. Learned counsel for the petitioner relied upon an unreported judgment of this Court in W.P.No.23777 of 2001 dated 14.12.2001, in which the purpose is stated as "to give patta to Adi Dravidars". In the present case, the notification issued under Section 4(1) published in the Gazette clearly states that the acquisition of the lands in Kodalvavi Village of the Dindigul Taluk of the Dindigul-Anna District is meant for Harijan Welfare Scheme (for providing house-sites to Adi Dravidaras). Hence, the purpose is clearly spelt. There is no merit in the contention that "the purpose for which the acquisition was sought to be made, is not specified".

9. The third and last contention of the writ petitioner is that the satisfaction of the District Collector is not found in Section 4(1) notification. In this regard, the petitioner relied on paragraph 10 of the judgment of this Court reported in 2004 (3) M.L.J. 262 (O.U.Sindha Madhar vs. The Special Tahsildar, Adhi Dravida Welfare Land Acquisition, Tenkasi), which reads as follows:

> "10. In the present case, it is obvious that the notice does not say that the Collector is satisfied. From the mere fact that the words refer to the notice being one under Sec.4(1), the Court cannot presume that the Collector was satisfied. When the Section mandates that the Collector should be satisfied, then there should be a record of the satisfaction of the Collector. If the notice does not indicate such satisfaction, then at least the records should show that the Collector is indeed satisfied with the recommendations of the Special Tahsildar that the acquisition was necessary."

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Learned Government Advocate produced the records and on a perusal of the same, it is found that the Collector was satisfied, with the purpose for which the acquisition was sought to be made based on the report of the second respondent. Even otherwise, the notification under Section 4(1) clearly states the purpose for which the acquisition is being made.

10. The Collector's satisfaction should be in relation to the land which is sought to be acquired in implementing the policy of the Government for providing house-sites to Adi Dravidars and the notification under Section 4(1) very clearly specifies the reason for acquisition with details of the land. Therefore, the contention that the satisfaction of the Collector is not found in Section 4(1) notification, does not hold good.

11. It is submitted by learned Government Advocate that the award enquiry was conducted on 2.9.1996 and objections were received and considered and an Award was passed on 28.10.1996 and revenue records mutated. The writ petition has been filed on 25.11.1996, after the passing of the award. The challenge to the notification issued under Section 4(1) of the Act, after passing of the award, cannot be entertained in the facts and circumstances of the case. In support of the same, learned Government Advocate submitted the following judgments:

(a) 2000 AIR SCW 197 (Municipal Council, Ahmednagar vs. Shah Hyder Being) and

(b) Unreported order of this Court by P.Sathasivam,J, in W.P.No.19887 of 1998 dated 12.10.2000.

Hence, there is no merit in any of the contentions raised by learned counsel for the petitioner.

12. For the abovesaid reasons, the writ petition fails and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. "Rule Nisi" is discharged.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The District Collector,
Dindigul Mannar Thirumalai District.

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2. The Special Tahsildar,
Adi Dravidar Welfare Scheme-I,
Dindigul.

1 cc to Mr.N.Damodaran, Advocate, SR. 4008
1 cc to Govt. Pleader, Sr. 4111

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